

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MICHAEL DENTON,

Petitioner,

v.

DONALD R. HOLBROOK,

Respondent.

CASE NO. C20-5066 BHS-JRC

ORDER DENYING OBJECTIONS
TO NON-DISPOSITIVE ORDER
AND ADOPTING REPORT AND
RECOMMENDATION

This matter comes before the Court on Petitioner Michael Denton's ("Denton") objections to order denying motion to appoint counsel, Dkt. 10, the Report and Recommendation ("R&R") of the Honorable J. Richard Creatura, United States Magistrate Judge, Dkt. 13, and Denton's objections to the R&R, Dkt. 17.

On January 29, 2020, Judge Creatura granted Denton's motion to proceed *in forma pauperis* and accepted Denton's petition and motion to appoint counsel. Dkts. 4–6. On March 9, 2020, Judge Creatura issued a show cause order requiring Denton to file an amended petition for numerous reasons, including that his third ground for relief is an Eight Amendment claim that improperly relates to his conditions of confinement. Dkt. 7. On March 12, 2020, Judge Creatura denied Denton's motion to appoint counsel

1 concluding that the “circumstances that petitioner lists for granting appointment of
2 counsel—limited access to a law library, lack of legal training, and conflicting testimony
3 and evidence—are circumstances common to most litigants and not the exceptional
4 circumstances necessary to justify the appointment of counsel.” Dkt. 9 at 2. On March
5 20, 2020, Denton filed objections to this non-dispositive order. Dkt. 10.

6 On May 6, 2020, Judge Creatura issued the R&R recommending that the Court
7 dismiss Denton’s third ground for relief because it is not cognizable in a § 2254 petition.
8 Dkt. 13. On May 14, 2020, Denton filed objections. Dkt. 17.

9 **A. Objections to Non-Dispositive Order**

10 The district judge in the case must consider timely objections and modify or set
11 aside any part of the order that is clearly erroneous or is contrary to law. Fed. R. Civ. P.
12 72(a).

13 In this case, Denton has failed to establish that Judge Creatura’s order is either
14 clearly erroneous or contrary to law. Instead, the Court agrees with Judge Creatura that
15 limited access to legal resources, standing alone, does not warrant the appointment of
16 counsel at this point in the proceeding. Therefore, the Court denies Denton’s objections.

17 **B. Objections to R&R**

18 The district judge must determine de novo any part of the magistrate judge’s
19 disposition that has been properly objected to. The district judge may accept, reject, or
20 modify the recommended disposition; receive further evidence; or return the matter to the
21 magistrate judge with instructions. Fed. R. Civ. P. 72(b)(3).

1 In this case, Denton argues that his third claim for relief is a proper habeas claim
2 because it relates to the “fact” of his placement in solitary confinement. Denton fails to
3 provide any authority to support his argument, and his argument has been rejected by
4 numerous courts. *See, e.g., Borja v. Washington*, 3:20-CV-5195-RBL-DWC, 2020 WL
5 1875498, at *3 (W.D. Wash. Apr. 15, 2020). Thus, the Court adopts the R&R.

6 **C. Order**

7 Therefore, the Court having considered the R&R, both of Denton’s objections, and
8 the remaining record, does hereby find and order as follows:

- 9 (1) Denton’s objections to the non-dispositive order, Dkt. 10, are **DENIED**;
10 (2) The R&R is **ADOPTED**; and
11 (3) Denton’s third claim for relief is **DISMISSED with prejudice**;

12 Dated this 8th day of June, 2020.

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15 BENJAMIN H. SETTLE
16 United States District Judge
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